

MEMORANDUM OF UNDERSTANDING
between
The Yurok Tribal Heritage Preservation Officer
and the
California State Historic Preservation Officer
concerning
Implementation of § 101(d)(2)(D)(iii)
of the
National Historic Preservation Act

- Whereas:** The Yurok Tribe of California (Tribe) has entered into a Memorandum of Agreement with the National Park Service to implement § 101(d)(2) of the National Historic Preservation Act in lieu of the State Historic Preservation Officer (SHPO); and
- Whereas:** “Tribal lands” are defined in § 301(14)(A)(B) of the National Historic Preservation Act as *all lands within the exterior boundaries of any Indian Reservation and all dependent Indian communities*; and
- Whereas:** The Tribe has assumed all of the State Historic Preservation Officer functions for its tribal lands; and
- Whereas:** The Tribe has agreed with the National Park Service to observe the requirements of § 101(d)(2)(D)(iii) of the Act which reads as follows:
- ...that the plan provides, with respect to properties neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe, at the request of the owner thereof, the State Historic Preservation Officer, in addition to the tribal preservation official, may exercise the historic preservation responsibilities in accordance with subsections (b)(2) and (b)(3) of this section...; and*
- Whereas:** Information provided to the SHPO by the Tribal Historic Preservation Officer (THPO) concerning specific archaeological or Yurok cultural properties will be treated as confidential information and not subject to the Freedom of Information Act or Public Records Act pursuant to Section 301 of the National Historic Preservation Act and California Government Code Sections 6254 and 6254.10; and
- Whereas:** The THPO and the SHPO desire to implement the above section provision in balance with Tribal sovereignty and State interests;
- NOW, THEREFORE,** be it resolved that the following provisions will guide the THPO and SHPO implementation and towards resolution any disputes regarding the implementation of Section 101(d)(2)(D)(iii) of the National Historic Preservation Act on tribal lands.

A. ACCEPTABLE FORM OF COMPLAINT

1. The SHPO will require landowners requesting SHPO intervention to make their requests in writing and providing:
 - a. proof of ownership of the land for which responsibility(ies) implementation is contested; and
 - b. an accurate map of the property and specific location(s) where responsibility(ies) are contested; and
 - c. a clear statement of the specific responsibility(ies) for which the THPO has acted contrary to National Historic Preservation Act law or regulation as regards the functions listed in the Tribe's agreement with the Secretary of Interior; and
 - d. clear description of the facts leading the land owner to believe that the THPO is operating contrary to the National Historic Preservation Act and Regulations as regards the THPO assumed responsibilities.

B. SHPO AND THPO RESOLUTION PROCESS

1. The SHPO will forward a copy of the landowner request and any supporting documentation onto the THPO within five (5) working days of receipt if the landowner has not already copied the correspondence and supporting documentation to the THPO.
2. The SHPO will make a decision to intervene or remain apart from the landowner/THPO interaction within fifteen (15) days of receiving a request to intervene. Such decision will be made in writing to the landowner and the Tribe will be copied.
3. In recognition of Tribal Sovereignty, if the SHPO chooses to intervene, SHPO will contact the THPO to propose the next steps of National Historic Preservation Act implementation. SHPO intervention will occur at the procedural point of disagreement between the THPO and landowner.
4. The THPO and SHPO will strive to reach mutual agreement in the best steps, processes or methods for achieving the greatest historic preservation value and interest in relation to the landowner's specific request.

C. RESOLVING OBJECTIONS

1. Should either party to this Memorandum of Understanding (MOU) object at any time to the manner in which the terms of this MOU are implemented, or to any action carried out or proposed with respect to implementation of the MOU or to any documentation prepared in accordance with and subject to the terms of this MOU, THPO and SHPO shall consult for no more than five (5) days from the date of written notification to resolve the objection. If the objection is resolved through such consultation, the action in dispute may proceed in accordance with the terms of that resolution. If, after initiating such consultation, THPO or SHPO determines that the objection can not be resolved through consultation, and action involves compliance with Section 106 of the National Historic Preservation Act, then THPO or SHPO shall forward all documentation relevant to the objection to the Advisory Council on Historic Preservation (Council), including THPO and/or SHPO proposed response to the objection, with the expectation that the ACHP will, within 30 days after receipt of such documentation:
 - a. advise THPO or SHPO that the Council concurs in the proposed response to the objection, whereupon THPO or SHPO will respond to the objection accordingly; or

- b. provide THPO or SHPO with recommendations, which THPO or SHPO will take into account in reaching a final decision regarding its response to the objection; or
 - c. notify THPO or SHPO that the objection will be referred for comment pursuant to 36 CFR § 800.7(a)(4), and proceed to refer the objection and comment. The THPO shall take the resulting comments into account in accordance with 36 CFR § 800.
- 2. Should the Council not exercise one of the following options within thirty (30) days after receipt of all pertinent documentation, THPO or SHPO may assume the Council's concurrence in the requesting party's proposed response to the objection.
 - 3. THPO or SHPO shall take into account any Council recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection. THPO's responsibility to carry out all other actions under this MOU that are not the subject of the objection will remain unchanged.
 - 4. For National Register of Historic Places determination of eligibilities, nominations or part 1 determination for federal tax credits, objections will be forwarded to the Keeper of the National Register for resolution.
 - 5. At any time during implementation of the measures stipulated in this MOU, should an objection pertaining to such implementation be raised by a member of the public, the reviewing party shall notify the other parties to the MOU in writing of the objection and take the objection into consideration. The THPO shall consult with the objecting party and, if the objecting party so requests, the SHPO for no more than fifteen (15) days. Within ten (10) days following closure of this consultation period, THPO will render a decision regarding the objection and notify all consulting parties of its decision in writing. In reaching its decision, THPO will take into account any comments from the consulting parties regarding the objection, including the objecting party. THPO's decision regarding the resolution of the objection will be final. THPO may authorize any action subject to objection under this paragraph to proceed after the objection has been resolved in accordance with the terms of this paragraph.

D. AMENDMENTS

- 1. Any party to this MOU may propose that this MOU be amended, whereupon the parties to this MOU will consult for no more than thirty (30) days to consider amendment. This MOU may be amended only upon the written agreement of both parties. If it is not amended, this MOU may be terminated by either party in accordance with Stipulation E.

E. TERMINATION

- d. If this MOU is not amended as provided for in Stipulation D., or if either party proposes termination of this MOU for other reasons, the party proposing termination shall, in writing, notify the other party to this MOU, explain the reasons for proposing termination, and consult for at least thirty (30) days to seek alternatives to termination.
- 2. Should such consultation result in an agreement on an alternative to termination, then the Parties shall proceed in accordance with the terms of this agreement.
- 3. Should such consultation fail, the party proposing the termination may terminate this MOU by promptly notifying the other party to this MOU in writing. Termination hereunder shall render this MOU without further force or effect.

4. If this MOU is terminated, the procedures for implementation of Section 101 (d)(2)(D)(iii) shall be followed.

F. DURATION AND EFFECTIVE DATE OF THE MOU

1. Unless terminated pursuant to Stipulation E., or unless superceded by an amended MOU, this MOU will be in effect for five (5) years.

2. This MOU will take effect on the date that it has been executed by the SHPO.

Signed:

Thomas Gates
Yurok Tribal Historic Preservation Officer

date

Milford Wayne Donaldson
California State Historic Preservation Officer

date